

THE LAW OFFICE OF LUCERO AND HOWARD, LLC
20 FIRST PLAZA, SUITE 515
ALBUQUERQUE, NM 87102

TELEPHONE
(505) 225-8778

WWW.LAWOFFICE-LH.COM

FACSIMILE
(505) 288-3473

CHRIS LUCERO

CHRIS@LAWOFFICE-LH.COM

MAILING ADDRESS
PO BOX 25391
ALBUQUERQUE, NM 87125



LEON HOWARD

LEON@LAWOFFICE-LH.COM

January 22, 2015

-Via First Class Mail -

Nancy C. Sharp, Registered Agent, or
Risk Management Department
Northern New Mexico College
921 North Paseo De Onate
Espanola, NM 87532

Re: Offer to Settle Claims Regarding Shawna Chavez

Dear Ms. Sharp or Risk Management:

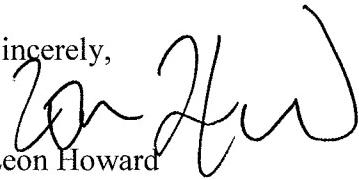
I represent Shawna Chavez for the purpose of resolving issues surrounding her employment with Northern New Mexico College (NNMC). The purpose of our letter is to notify you that we are prepared to file an action that includes New Mexico Whistleblower and New Mexico Tort Claims Act claims on Mrs. Chavez's behalf against NNMC and several employees that participated in illegal conduct directed at Mrs. Chavez. A draft of the complaint is attached for your review.

While the allegations in Ms. Chavez's complaint against NNMC and its employees are serious, Mrs. Chavez is open to resolving this matter prior to litigation. Pre-litigation resolution of this matter would save NNMC litigation expenses, time, and would avoid negative exposure for NNMC. To this end, my office has been contacted by numerous current and former NNMC employees and former NNMC students who all have expressed a willingness to come forward with detailed information about NNMC's long history of abusive behavior toward its employees.

Mrs. Chavez has authorized us to release all claims that she has against NNMC and Defendants listed in her complaint for \$85,000. This offer is a good faith attempt to resolve Mrs. Chavez's claims for damages incurred without the need for litigation.

This offer will remain open for 15 days. If we do not hear from you we will commence litigation.

Sincerely,



Leon Howard

Attorney and Counselor at Law

**FIRST JUDICIAL DISTRICT COURT
COUNTY OF RIO ARRIBA
STATE OF NEW MEXICO**

SHAWNA CHAVEZ

Plaintiff,
v. _____
Case No. _____

**MYRNA VILLANUEVA, BERNIE PADILLA,
RICKY SERNA, CHRISTINA ESQUIBEL,
NANCY BARCELO, in their individual and official
capacities, and NORTHERN NEW MEXICO COLLEGE,**

Defendants.

**COMPLAINT FOR TORT CLAIMS AND
VIOLATION OF THE NEW MEXICO WHISTLEBLOWER PROTECTION ACT**

Plaintiff Shawna Chavez (Mrs. Chavez or Plaintiff) by and through her counsel of record, The Law Office of Lucero and Howard, LLC, (Leon Howard) hereby brings this Complaint for damages against Defendants pursuant to the New Mexico Whistleblower Protection Act, the New Mexico Tort Claims Act, and NMSA §§ 41-4-1 through 41-4-27. As grounds for this Complaint, Mrs. Chavez states as follows:

JURISDICTION, VENUE, AND PARTIES

1. Jurisdiction and venue are proper pursuant to Article VI, Section 13 of the New Mexico Constitution and NMSA § 38-3-1(A). All parties reside in New Mexico, and the acts complained of occurred within Rio Arriba County, New Mexico.

2. Shawna Chavez is a resident of Rio Arriba County, New Mexico. At all times material, Mrs. Chavez was employed as Recruitment, Retention, and Advising Coordinator (Coordinator) at Northern New Mexico College (NNMC).

3. Based on information and belief, Defendant Myrna Villanueva (Dr. Villanueva) is a resident of New Mexico. During a portion of the events complained of herein, Dr. Villanueva was employed as the Dean of the College of Education at NNMC.

4. Based on information and belief, Defendant Bernie Padilla (Mr. Padilla) is a resident of New Mexico. At all times material, Mr. Padilla was the Human Resources Director at NNMC.

5. Based on information and belief, Defendant Ricky Serna (Mr. Serna) is a resident of New Mexico. At all times material, Mr. Serna was the Vice President at NNMC.

6. Based on information and belief, Defendant Christina Esquibel (Ms. Esquibel) is a resident of New Mexico. At all times material, Ms. Esquibel was the Faculty Director at NNMC.

7. Based on information and belief, Defendant Nancy Barcelo (Ms. Barcelo) is a resident of New Mexico. At all times material, Ms. Barcelo was the President at NNMC.

8. Defendant Northern New Mexico College (NNMC) is a public employer within the meaning of the New Mexico Whistleblower Protection Act, 1978 NMSA, §10-16C-2(C). At all times material hereto, the NNMC officers and employees mentioned in this Complaint were acting within the scope of their duties. NNMC is liable for the retaliatory actions undertaken by its employees as explained below.

PERTINENT FACTUAL BACKGROUND

9. Mrs. Chavez was hired at as a Coordinator at NNMC in October of 2013.

10. Dr. Villanueva was Mrs. Chavez's direct supervisor upon being hired at NNMC.

11. Shortly after being hired, Dr. Villanueva groomed the staff in the Education Department for a review meeting that was to be held with the greater NNMC campus. Dr.

Villanueva went beyond the bounds of general preparation, but told the staff what they were supposed to say and how they should respond to questions at the meeting.

12. Mrs. Chavez questioned Dr. Villanueva about this practice, and Dr. Villanueva took exception to Mrs. Chavez questioning Dr. Villanueva's staff grooming practice.

13. Thereafter, Dr. Villanueva became verbally abusive to Mrs. Chavez.

14. Mrs. Chavez noticed that not only was Dr. Villanueva verbally abusive to her, she was also verbally abusive to other staff and students at NNMC.

15. On November 8, 2013, a student came into the Education Department to withdraw from school. While Mrs. Chavez was tending to this student's needs, Dr. Villanueva approached Mrs. Chavez in angry fashion and physically shoved Mrs. Chavez with a file. After Dr. Villanueva shoved Mrs. Chavez, she glared at Mrs. Chavez and walked off.

16. Shortly after this incident, Mrs. Chavez informed Mr. Padilla that she would like to make a complaint related to Dr. Villanueva's behavior. Mr. Padilla explained to Mrs. Chavez that she had three options to make a complaint: 1) do nothing and hope that things get better; 2) file an informal grievance which would be handled directly by him; or 3) file a formal grievance that was a lengthy process and "would take years to resolve." Mrs. Chavez felt discouraged by Mr. Padilla from making a formal complaint, so she pursued the informal option.

17. Based on information and belief, as a result of Mrs. Chavez bringing to light the mistreatment she endured by Dr. Villanueva, Ms. Esquibel began to exhibit hostile and unprofessional toward Mrs. Chavez.

18. On or about November 20, 2013, still feeling discouraged by the way she was being treated and having no resolve as a result of her informal complaint, she brought the above-mentioned incidents to the attention of Dr. Anthony Sena, provost (Dr. Sena).

19. Also on or about the same date, Mrs. Chavez brought the same incidents to the attention of Tim Crone, Union President and Mr. Serna.

20. On or about November 27, 2013, Mrs. Chavez met with Mr. Padilla again, and Mrs. Chavez explained how she was now also being mistreated by Ms. Esquibel, and Mr. Padilla recommended that Mrs. Chavez initiate an informal grievance concerning Ms. Esquibel's conduct. Mrs. Chavez emailed Mr. Padilla that day to initiate the informal grievance concerning Ms. Esquibel.

21. On December 4, 2013, Mrs. Chavez and a colleague met with Dr. Sena, and he referred to the two of them as his "headaches," and conceded that Ms. Esquibel has exhibited abusive behavior to staff members for many years.

22. On December 11, 2013, Mr. Serna came into Mrs. Chavez's office, and in reference to the issues in Mrs. Chavez informal complaints, Mr. Serna told Ms. Chavez that he could "make all of this go away." Subsequently, Mr. Serna offered Mrs. Chavez a Director position in NNMC's administrative office working directly under him. Mr. Chavez expressed that the position was offered because she would be helping him by filling a vacant position and so she could forget about everything that happened to her with Dr. Villanueva and Ms. Esquibel. Mr. Serna asked Mrs. Chavez if she was professional enough to accept the offer and never discuss her experiences in the College of Education again. Next, Mr. Serna reiterated that Mrs. Chavez never discuss her grievances again and gave her a 5:00 p.m. deadline to accept his offer.

23. Before the day's end Mrs. Chavez sent Mr. Serna an email summarizing the terms of accepting the position and asked that she be allowed an extension to discuss the decision with her husband.

24. On December 12, 2013 and on December 13, 2013, Mrs. Chavez sent emails to Dr. Sena and Dr. Patricia Trujillo (Dr. Trujillo) asking that concerns she had about the way things were being handled at the College of Education be addressed.

25. On December 17, 2013, Mr. Serna and Mr. Padilla came into Mrs. Chavez's office and asked if she had time to consider his offer. Mr. Serna told Mrs. Chavz that NNMC "could fill the position in a heartbeat" and the position was not going to be available to her whenever she wanted it. Mr. Serna also called Mrs. Chavez disrespectful for requesting help from Dr. Trujillo. At this time, Mrs. Chavez declined the position Mr. Serna had offered to her.

26. On December 18, 2013, Mrs. Chavez was placed on administrative leave. She was not given a reason for being placed on administrative leave and was escorted out of NNMC by security.

27. On January 6, 2014, Mrs. Chavez sent President Barcelo an official grievance concerning Mr. Padilla, Dr. Sena, and Mr. Serna.

28. On January 9, 2014, Mrs. Chavez was served with a termination letter.

COUNT I – VIOLATION OF THE WHISTLEBLOWER PROTECTION
(All Defendants)

29. Mrs. Chavez incorporates by reference the preceding paragraphs as though they were state fully herein.

30. Defendants qualify as a public employers under NMSA § 10-16C-2(C).

31. Mrs. Chavez had a good faith belief that the acts committed by Defendants, and described above, were improper and/or unlawful.

32. Plaintiff's reporting of these unlawful acts and communication of her concerns and objections regarding these acts and practices were protected under NMSA 1978, § 10-16C-3(A).

33. Defendants through the acts of these individuals and their own actions, unlawfully retaliated against Plaintiff for reporting unlawful and improper acts, in violation of the Whistleblower Protection Act, NMSA 1978, § 10-16C-3(C).

34. Plaintiff is entitled to relief under NMSA 1978, § 10-16C-4.

NEW MEXICO TORT CLAIMS

COUNT II – Battery
(Defendant Villanueva)

35. Mrs. Chavez incorporates by reference the preceding paragraphs as though they were stated fully herein.

36. In undertaking the actions described above, Defendant Villanueva intended to cause a harmful and offensive contact with Mrs. Chavez.

37. In undertaking the actions described above, Defendant Villanueva caused an offensive contact with Plaintiff Shawna Chavez to occur.

38. Mrs. Chavez suffered pain and injuries as a result of Defendant Villanueva's actions.

39. The actions of Defendant Villanueva as described in the preceding paragraphs, constitute a battery under New Mexico law for which immunity has been waived by NMSA 1978, § 41-4-12 (1977).

40. Because Defendant Villanueva were acting within the scope and course of her duties an NNMC employee while committing a battery upon Mrs. Chavez, the NNMC is liable for battery pursuant to the doctrine of *respondeat superior*.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for a judgment against the defendants as follows:

-
- a. Award Plaintiff damages as provided by NMSA 1978, § 10-16C-4(A).

- b. Award Plaintiff his litigation costs and attorney's fees as provided by NMSA 1978, § 10-16-4(A).
- c. Award Plaintiff any other form of relief in law or equity that this Court deems necessary and proper.

Respectfully Submitted:

/s/ *.*.15 Leon Howard
Leon Howard
The Law Office of Lucero & Howard, LLC
P.O. Box 25391
Albuquerque, NM 87125
Phone: (505) 225-8778
Fax: (505) 288-3473

Attorneys for Plaintiff